

Application No. 09/854,181

REMARKS

Claims 1-6, 11-23, 25-37, 40-57 and 60-70 are pending in this application with Claims 11-23, 31-37, 40-48, 69 and 70 having been withdrawn from consideration by the Examiner as a result of the Species Election Requirement, which was issued on September 13, 2002.

Claims 1-3, 25-28, 49-55 and 60-68 are rejected. Claims 4-6, 29 and 30 are objected to as being dependent upon a rejected base claim.

Claims 1-3, 5, 12, 14-16, 19, 21, 29, 31, 34-37, 40, 41, 44, 47, 55, 56, 63, and 66-68 been amended. Claims 4, 18, 33, 42, 43, 45, 46, and 48 have been cancelled. For the convenience of the Examiner, a clean copy of all pending claims are listed in Appendix A.

Upon entry of this Amendment and Response, Claims 1-3, 5, 6, 11-17, 19-23, 25-32, 34-37, 40, 41, 44, 47, 49-57 and 60-70 will be pending in this application with Claims 11-17, 19-23, 31, 32, 34-37, 40, 41, 44, 47, 69 and 70 having been withdrawn from consideration by the Examiner.

As an initial matter, Applicants wish to thank the Examiner for indicating that Claims 4-6, 29 and 30 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Applicants also wish to thank the Examiner for withdrawing all the art based rejections.

Claim Amendments

Claims are amended by utilizing conventionally accepted chemical structures and to be in compliance with conventional usage of various terms in the art. For example, the chemical structure in previous Claim 2 (now in Claim 1) is recited as having:

Rings A, B and C are 5- or 6-carbon aromatic rings each optionally substituted with from one to four fluorines and wherein one or two CH groups in the rings can be substituted with a N, an O or a S group[.]

This has been amended by redrawing the chemical structure (see Claim 1) and indicating that:

each of A¹, A², A³, A⁴, B¹, B², B³, B⁴, C¹, C², C³, and C⁴ is independently CH, N, or CF, provided no more than 2 of A¹, A², A³, and A⁴ is N, no more than 2 of B¹, B², B³, and B⁴ is N, and no more than 2 of C¹, C², C³, and C⁴ is N[.]

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This redrawing of chemical structure more fully conforms to the conventional form used in the art and renders much clearer picture of the compounds claimed in the present application. Since the chemical structures are based on literal descriptions, Applicants submit that no new matter is added by redrawing the chemical structure.

In addition, some of the non-conventional variable definitions have been amended for clarification, for example, see the definition of R^1 in Claim 1. In particular, originally R^1 was defined as being alkyl but is allowed to have "a cis or trans double bond or a triple bond." Since the term "alkyl" is traditionally used to indicate only saturated moieties, R^1 has been redefined as being alkyl, alkenyl or alkynyl. It is well understood in the art that the term "alkenyl" refers to a moiety having a carbon-carbon double bond anywhere along the chain that can be cis- or trans-configuration. The term "alkynyl" is used in the art to refer to a moiety having a carbon-carbon triple bond anywhere along the chain. Accordingly, it is submitted that no new matter has been added by amending R^1 to be alkyl, alkenyl, or alkynyl. This amendment of R^1 simply avoids non-conventional use of the term alkyl. Furthermore, Claim 12 has been amended to include a methyl substituent on silicon (i.e., $-(CH_2)_n-R^b$ is methyl). Support for such amendment can be found throughout the specification including compound number 538 on page 69, which comprises a trimethylsilyl group at the end of the alkyl chain.

Species Election

It is noted that while some of the claims have been withdrawn from consideration by the Examiner as a result of the Species Election Requirement, it is Applicants' understanding that in the event the Examiner does not withdraw the species election requirement the Examiner will follow the procedure set forth in M.P.E.P. §809.02(c), which provides for a complete action on the merits of all claims readable on the elected species. In addition, it is Applicant's understanding that the Examiner will also follow the procedure set forth in M.P.E.P. §803.02, whereby upon the finding of allowable species, examination will continue with the non-elected species until all species have been examined or a non-allowable species is found.

Unlike a restriction requirement, the species election does not preclude Applicants from pursuing the original form of the claim in subsequent prosecution, nor does it force Applicants to

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file multiple divisional applications which are incapable of capturing the intended scope of the application. Accordingly, it is Applicants understanding that under the procedure set forth in M.P.E.P. §803.02, upon the finding of allowable species all the withdrawn claims will be rejoined and examined as well.

Rejection under 35 U.S.C. §112, first paragraph

Claims 2-3, 25-28, 49-55 and 63-68 are rejected under 35 U.S.C. §112, first paragraph, as being enabling for 6-carbon aromatic ring each optionally substituted one or two CH groups substituted with N, but allegedly does not reasonably provide enablement for 5- or 6-carbon aromatic rings containing a O or S or S, O and N combinations.

The compound structure and the variables (previously in Claim 2 now in Claim 1) have been amended by redrawing the chemical structure in a more conventional form and redefining the variables in accordance with the newly drawn chemical structure. Applicants submit that these amendments render the rejection under 35 U.S.C. §112, first paragraph, moot.

Rejection under 35 U.S.C. §112, second paragraph

Claims 1, 5-57 and 60-62 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner alleges variable R^1 and the range of m are vague.

As stated above, Claims have been amended by redrawing the chemical structure in a more conventional form and redefining the variables in accordance with the newly drawn chemical structure. For example, among others, variables R^1 and m have been amended to more clearly define the present invention. Applicants submit that these amendments render the rejection under 35 U.S.C. §112, second paragraph, moot.

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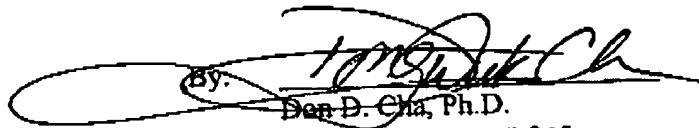
Conclusion

In view of the foregoing, Applicants submit that all claims now pending in this Application are in condition for allowance. Therefore, an early Office Action to that effect is earnestly solicited. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-607-3614.

It is believed that no fees are due with this Response. If any such fees are due, however, then please debit such fees to Deposit Account 06-0029 and notify us of the same.

Dated: July 22, 2005

Respectfully Submitted,
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